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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

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Baja Developments LLC, a New York) limited liability company,

No. CV-09-756-PHX-LOA

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Plaintiff,

**ORDER**

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vs.

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TSD Loreto Partners, S EN C. POR A. DE) C.V., a Mexican entity,

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Defendant.

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This matter arises on Plaintiff's Objection to Dismissal for Lack of Service, docket # 9, and the Court's review of the record.

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Plaintiff commenced this action on April 13, 2009, docket # 1, and subsequently consented to magistrate-judge jurisdiction. (docket # 7) Noting that the 120-day deadline for accomplishing service had passed, *see* Fed.R.Civ.P. 4(m), and consistent with the undersigned's responsibilities mandated by Congress in the Civil Justice Reform Act of 1990, 28 U.S.C. §471 *et seq.*, on August 19, 2009, the Court ordered Plaintiff to show cause why this case should not be dismissed for failure to serve the Summons and Complaint. (docket # 8)

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Plaintiff timely responded by filing its Objection to Dismissal for Lack of Service, arguing that Rule 4(m) does not apply to service of process on Defendant in this case. (docket # 9) Plaintiff's objection is well taken. Defendant is a Mexican entity. Plaintiff correctly states that Federal Rule of Civil Procedure 4(m)'s 120-day time limit for service

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1 does not apply to foreign individuals or corporations. *See, e.g., Flock v. Scripto-Tokai Corp.*,  
2 2001 WL 3111630, at \* 4-6 (S.D. Tex. June 25, 2001) (“[C]ourts have consistently  
3 recognized that the 120-day time limit does not apply to service in foreign countries of  
4 individual or corporate defendants.”) (citing cases); *Lucas v. Natoli*, 936 F.2d 432, 433 (9<sup>th</sup>  
5 Cir. 1991). Federal Rule of Civil Procedure 4(m) states that “this subdivision (m) does not  
6 apply to service in a foreign country under Rule 4(f) or 4(j)(1).” Plaintiff’s counsel  
7 represents they in the process of serving Defendant in Mexico pursuant to 4(f).<sup>1</sup> (docket #  
8 9)

9           Although Rule 4(m)’s time limit does not apply to service in a foreign country,  
10 Plaintiff has not cited, nor has the Court found, any authority stating that a district court is  
11 precluded from setting a reasonable time limit for service in a foreign country to properly  
12 manage a civil case. *Montalbano v. Easco Hand Tools, Inc.*, 766 F.2d 737, 740 (2d Cir.  
13 1985) (holding that exemption from 120-day time limit for service of process in foreign  
14 countries provided by Rule 4(m)’s predecessor (Rule 4(j)) did not apply where the plaintiff  
15 had not even attempted to serve the foreign defendants); *Mitchell v. Theriault*, 516 F.Supp.2d  
16 450, 458 (M.D.Pa. 2007) (concluding that, “[a]lthough the time limit of Federal Rule of Civil  
17 Procedure 4(m) is expressly made not to apply to service in a foreign country pursuant to  
18 subdivisions (f) of (j)(1), the Court will impose a limit of one hundred and twenty (120) days  
19 from the date of this order for Plaintiffs to effect proper service on Defendant. . . .”).

20           In *Umbenhauer v. Woog*, 969 F.2d 25 (3d Cir. 1992), the Third Circuit noted  
21 that “Rule 4[m] expressly states that it ‘shall not apply to service in a foreign country’ . . .  
22 Rule 4[m]’s drafters apparently incorporated this exemption into Rule 4[m] because . . . ‘the  
23 vagaries of such service [on foreign defendants] render the Rule 4[m] time limit too  
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25 <sup>1</sup> Subdivision (f) of Rule 4 specifies the method of service of individuals in foreign  
26 countries, while subdivision (j)(1) specifies the manner of service upon foreign states or  
27 political subdivisions, agencies, or instrumentalities. Fed.R.Civ.P. 4(f), (j)(1). Subdivision  
28 (h)(2) provides that, when serving a foreign corporation, partnership, or association “at a  
place not within any judicial district of the United States,” a litigant shall follow Rule 4(f).  
Fed.R.Civ.P. 4(h).

1 burdensome on a plaintiff.” *Id.* at 31 (quoting *Green v. Humphrey Elevator and Truck Co.*,  
2 816 F.2d 877 (3d Cir. 1987)). The Third Circuit held that dismissal of a complaint for  
3 improper service of process was an abuse of the district court’s discretion when service was  
4 “eminently feasible.” *Id.*

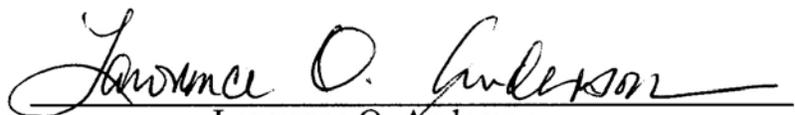
5 This case has been on file since April 13, 2009. Plaintiff has offered to provide  
6 specifics of its service attempts. (docket # 9) Although the Court will not, at this juncture,  
7 require Plaintiff to file a report detailing its service attempts, the Court will impose a  
8 reasonable time limit for accomplishing service of process on Defendant. Specifically, the  
9 Court will direct Plaintiff to accomplish service on or before November 27, 2009. If Plaintiff  
10 is unable to accomplish service by the November 27, 2009 deadline, it shall file a Status  
11 Report, detailing its efforts to serve Defendant and showing whether service is “eminently  
12 feasible.” At that time, the Court may revisit whether dismissal is appropriate for failure to  
13 serve.

14 Accordingly,

15 **IT IS HEREBY ORDERED** that Plaintiff has discharged its duty to respond  
16 to the August 19, 2009 Order to Show Cause. (docket # 8)

17 **IT IS FURTHER ORDERED** that Plaintiff shall either serve Defendant on  
18 or before **November 27, 2009**, or shall file a Status Report, detailing its due-diligent efforts  
19 to serve Defendant and showing whether service is “eminently feasible.”

20 Dated this 27<sup>th</sup> of August, 2009.

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23 Lawrence O. Anderson  
24 United States Magistrate Judge  
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